IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 47 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF WEALTH-TAX

Versus

REKHA & DHANESH TRUST

Appearance:
MR B.B. NAIK, MR. P.G. DESAI and MR MIHIR JOSHI -
Advocates for Petitioner
Respondent SERVED

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE
Date of decision: 29/01/98

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The Income Tax Appellate Tribunal, Ahmedabad Bench "B" has referred for the opinion of this Court the following question under Section 27(1) of the Wealth Tax Act, 1957, arising out of the common order of the

Tribunal in a group of matters.

"Whether, the Appellate Tribunal is right in law and on facts in holding that the assessee trust is not liable to tax as the return of wealth is below the statutory limit?"

The assessee is a discretionary trust and therefore, the assessment was required to be made as per the provisions of Section 21(4) of the said Act. The relevant Assessment Year was 1981-82. The assessee filed return of wealth on 22.3.1983, declaring net wealth of Rs. 47,630/-. The Wealth Tax Officer, Ahmedabad, however, by his order made under Section 16(3) of the said Act, assessed the net wealth at Rs. 57,636/- and on the ground that the assessee was a discretionary trust, charged the same at a maximum rate. In the appeal, the Deputy Commissioner of Income Tax (Appeals) held that since the return of wealth of the assessee trust was below the statutory limit of Rs. 1 lac which was provided for at the relevant time, the question of levy of wealth tax on such net wealth did not arise and consequently, the higher rate prescribed under Section 21(4) of the Wealth Tax becomes immaterial in such cases. The Revenue challenged the said decision of the appellate authority before the Tribunal and the Tribunal, relying upon the ratio of the decision of the Madras High Court in the case of Haresh Anitha Trust Vs. C.W.T., reported in 173 ITR 103, dismissed the appeal, holding that the higher rate prescribed under Section 21(4) of the Act, became immaterial in cases where the net wealth did not exceed Rs. 1 lac.

2. It has been contended by the learned Counsel Mr. B.B.Naik, Mr. Pranav Desai and Mr. Mihir Joshi who addressed us in this and all the cognate matters on Board, which were heard together, that Section 21(4) of the Act was a special provision for recovery of wealth tax from the representative assessee when the shares of the beneficiaries were indeterminate and unknown and therefore, the general provisions of Section 3 which was the charging Section, will yield to the said specific provision and a flat rate of 3% or the higher rate as may have been prescribed in Schedule I was attracted for the entire net wealth right from the first rupee, irrespective of the initial exemption limit which was applicable in other cases falling in Section 3. It was contended that the decision of the Madras High Court in Haresh Anitha Trust (supra) proceeded on an erroneous footing that there was nothing in Section 21(4), which could be construed as a charging provision, just because

the word "charge" was not used in Section 21(4) of the said Act like Section 164 of the Income Tax Act, 1961 and instead, word "levied" was used. It was then contended that the explanation of the amendment, made in the provisions of Section 21(4), as given by the Board, indicated that the intention of the legislature was to plug the loopholes by providing a minimum flat rate of 3% in all cases of such representative assessees, which held the assets on behalf of persons whose shares were unknown or indeterminate. It was contended that the exemption limit upto which wealth tax was not payable in the Schedule-I would be a `nil' or `zero' per cent rate of duty which stood substituted by 3%, in view of the special provision contained in clause (b) of sub-section (4) of Section 21 of the said Act. Reliance was placed on the decisions in the cases of Piarelal Sakseria Family Trust Vs. CIT reported in 136 ITR 583(M.P); Surendranath Gangopadhyaya Trust Vs. CIT West Bengal reported in 142 ITR 149 (Calcutta); and CIT Vs. Trustees of H.E.H Nizam's Family (Remainder Wealth) Trust, reported in 108 ITR 555 (S.C), in support of these contentions. It was then contended by these learned Counsel that while interpreting a fiscal statute, the intention of the legislature could be ascertained from and its provisions should be interpreted keeping in view the object sought to be achieved and by taking note of the fact as to what loopholes were intended to be plugged by such provision. Reliance was placed in support of these contentions on the decisions of the Supreme Court in the cases of C.A.Abraham Vs. ITO, Kottayam and anr., reported in AIR 1961 (S.C) 609; M/s.Motibhai Fulabhai Patel & Co. Vs. R. Prasad, Collector of Central Excise, Baroda and ors., reported in AIR 1970 (S.C) 829 and K.P.Varghese Vs. ITO Ernakulam and anr. reported in AIR 1981 (S.C) 1922. It was submitted that if the exemption limit provided in Schedule-I is read in the provision of Section 21(4) of the said Act, it would lead to absurdity.

3. Section 3 of the said Act which provides for charge of wealth tax and falls in Chapter II relating to `Charge of wealth-tax and assets subject to such charge', reads as under:-

> "3. Subject to the other provisions contained in this Act, there shall be charged for every assessment year commencing on and from the first day of April, 1957, a tax (hereinafter referred to as wealth-tax) in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and *company

[at the rate or rates specified in Schedule I]."

Section 21(4), which is in Chapter V - `Liability to assessment in special cases, falls for our consideration and it reads as follows:-

"21.....xxxx.....xxx...
.....xxx.....xxx...xxx..

(4) Notwithstanding anything contained in this section, where the shares of the persons on whose behalf or for whose benefit any such assets are held are indeterminate or unknown, the wealth-tax shall be levied upon and recovered from the court of wards, administrator-general, official trustee, receiver, manager, or other person aforesaid 3[as the case may be, in the like manner and to the same extent as it would be leviable upon and recoverable from an individual who is a citizen of India and resident in India] for the purposes of this Act, and --

(a) at the rates specified in Part I of [Schedule I] [***]; or

(b) at the rate of [three per cent],

whichever course would be more beneficial to the revenue:

Provided that in a case where --

(i) such assets are held [under a trust declared by any person by will and such trust is the only trust so declared by him]; or

[(ia) none of the beneficiaries has net wealth-exceeding the amount not chargeable to wealth-tax in the case of an individual who is a citizen of India and resident in India for the purpose of this Act or is a beneficiary under any other trust; or]

(ii) such assets are held under a

trust created before the 1st day of March, 1970, by a non-testamentary instrument and the Wealth-tax Officer is satisfied, having regard to all the circumstances existing at the relevant time, that the trust was created bona fide exclusively for the benefit of the relatives of the settlor or where the settlor is a Hindu undivided family, exclusively for the benefit of the members of such family, in circumstances where such relatives or members were mainly dependent on the settlor for their support and maintenance; or

(iii) such assets are held by the trustees on behalf of a provident fund, superannuation fund, gratuity fund, pension fund or any other fund created bona fide by a person carrying on a business or profession exclusively for the benefit of persons employed in such business or profession,

wealth-tax shall be charged at the rates specified in Part I of [Schedule I] [***].

[Explanation 1: For the purposes of this sub-section, the shares of the persons on whose behalf or for whose benefit any such assets are held shall be deemed to be indeterminate or unknown unless the shares of the persons on whose behalf or for whose benefit such assets are held on the relevant valuation date are expressly stated in the order of the court or instrument of trust or deed of wakf, as the case may be, and are ascertainable as such on the date of such order, instrument or deed.]

[Explanation [2]: Notwithstanding anything contained in Section 5, in computing the net wealth for the purposes of this sub-section in any case, not being a case referred to in the proviso, any assets referred to in clauses (xv), (xvi), (xxii), xxiii), (xxiv), (xxv), (xxvi), (xxviii) and (xxix) of sub-section (1) of that

section shall not be excluded.]

Schedule-I, Part-I, which is relevant for the purposes of this matter stood as follows at the relevant time:

RATES OF WEALTH-TAX

Part I

(1) In case of every individual or Hindu undivided family, not being a Hindu undivided family to which item (2) of this Part applies,--

	Rate of tax
(a) where the net wealth does not exceed Rs. 2,50,000	1/2 per cent of the net wealth;
(b) where the net wealth exceeds Rs. 2,50,000 but does not exceed Rs. 5,00,000	Rs.1,250 plus 1 per cent of the amount by which the net wealth exceeds Rs. 2,50,000;
(c) where the net wealth exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000	Rs.3,750 plus 2 per cent of the amount by which the net wealth exceeds Rs. 5,00,000;
(d) where the net wealth exceeds Rs. 10,00,000 but does not exceed Rs. 15,00,000	Rs. 13,750 plus 3 per cent of the amount by which the net wealth exceeds Rs. 10,00,000;
(e) where the net wealth exceeds Rs. 15,00,000	Rs. 28,750 plus 5 per cent of the amount by which the net wealth exceeds Rs. 15,00,000

Provided that for the purposes of this item, --

(i) no wealth tax shall be payable where the net wealth does not exceed [Rs. 1,50,000];

(ii) the wealth-tax payable shall, in no case, exceed 5 per cent of the amount by which the net wealth exceeds [Rs. 1,50,000].

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3. Substituted for "Rs. 1,00,000" by the Finance Act, 1980, w.e.f 1.4.1980."

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4. It will thus be seen that as per the provisions of Section 3 read with Schedule I created thereunder, in the case of an individual, wealth tax was not payable where the net wealth did not exceed Rs. 1 lac, which was later on raised to Rs. 1,50,000/-. The words "no wealth tax shall be payable" in the proviso of Schedule I, Part-I, clearly indicate that an individual was exempted from wealth tax where his net wealth did not exceed the prescribed exemption limit. Therefore, since there was no liability to pay tax where the wealth was within the exemption limit no tax could be levied or recovered thereon.

5. Under sub-section (4) of Section 21, wealth-tax is to be levied upon and recovered from the representative assessee concerned in the like manner and to the same extent as it would be leviable upon and recoverable from an individual, who is a citizen of India and a resident in India for the purposes of the Act. The words "for the purposes of this Act" would also include the provisions of Section 21(4) of the Act. Therefore, though a representative assessee who holds the assets on behalf of the beneficiaries whose shares are indeterminate or unknown, is required to be assessed as an individual, the provision makes it clear that, that should be done in the same manner and to the same extent as the levy and recovery could be made from an individual. It therefore follows that if an individual is not liable to pay the wealth tax and the wealth tax is not recoverable from him, then to that extent it could also not be recovered from such representative assessee who is required to be assessed as an individual. After indicating the extent of liability of the representative assessee, the said provision proceeds to prescribe a higher rate of wealth tax to be paid by such representative assessee by providing that the wealth tax should be levied upon and recovered at the rate specified in Part-I of Schedule-I or at the rate of 3%, whichever

course would be more beneficial to the Revenue. The legislature, by confining the extent of the tax that could be levied upon and recovered from the representative assessee to the same extent as it would be leviable upon and recoverable from an individual in sub-section (4) of Sec. 21, clearly provided that if no wealth tax was payable from an individual, the further question of applying the higher rate would not arise. Since sub-section (4) of Section 21 itself provided the extent of liability of a representative assessee to be that of an individual and thereby preserved the exemption limit there was no conflict between the provision of sub-section (4) of Section 21 and Section 3 of the Act as regards availability of exemption limit to the representative assessee. It will be noted that as the provision of sub-section (4) of Section 21 was originally enacted and remained in operation till substituted by the amending provision w.e.f 1.4.1980, the base of charge with extent of liability was "as if the persons on whose behalf the assets were held were an individual for the purposes of the Act". Now, while maintaining the extent of leviability and recoverability of tax from the representative assessee, all that is done is to provide a higher rate where the tax becomes payable on crossing the exemption limit. It would therefore be fallacious to say that the legislature intended to take away the exemption limit which was applicable in such cases merely because higher rate came to be prescribed by the subsequent amendments.

There can be no doubt that where the net wealth exceeded the exemption limit higher rate became payable under sub-section (4) of Section 21, which would prevail over Section 3 of the Act in view of the opening words of Section 3, which made that provision subject to the other provisions contained in the Act. As held by Hon'ble the Supreme Court in Nizam Family Trust case (supra), Sec.3 must yield to the special provision of Sec. 21 whenever assessment is made on a trustee. However, since no wealth tax was payable at all by the representative assessee since the net wealth admittedly fell within the exemption limit referred to in the proviso in Schedule-I, Part-I, the question of applying the higher rate under clause (b) of Section 21(4) did not at all arise. In our view therefore, the Tribunal was right in holding that the assessee Trust was not liable to tax as the return of wealth was below the statutory limit.

6. It will be noted that we have reached the same conclusion as has been reached by the Madras High Court in Haresh Anitha Trust Vs. Commissioner of Wealth Tax

(supra), but for the reasons given by us hereinabove. In Haresh Anitha's case (supra) on the net wealth of the assessee trust being determined at Rs. 71,700/- as on 31.3.1975, wealth tax at the higher rate of 11/2% was levied rejecting the assessees claim that as the taxable wealth was below rupees one lakh, no wealth tax was payable having regard to the provisions of Section 21(4). The High Court held on a reference, that as the net wealth did not exceed rupees one lakh, the question of levy of wealth tax on such net wealth did not arise and consequently the higher rate prescribed by Section 21(4) had no relevance in such cases. It was held that though Sec. 21(4) refers to two different rates, the question of applying higher rate of tax will arise only if at the rate prescribed in the Schedule, the Revenue would lose something. Where, however, in terms of the Schedule, no rate was at all applicable as there was an exemption from the applicability of the rate, the question of ascertaining whether the higher rate prescribed in Section 21(4) will benefit the Revenue or not will not at all arise. The Court distinguished the cases of Piarelal Sakseria Family Trust Vs. CIT (supra) and Surendranath Gangopadhyaya Vs. CIT (supra), which were in context of the provisions of Section 164 of the Income Tax Act, 1961. It will be noted that the words "the wealth tax shall be levied upon and recovered from ....., in the like manner and to the same extent as it would be leviable upon and recoverable from an individual ....." of sub-section (4) of Section 21 of the Wealth Tax Act, were not there in the provisions of Section 164 of the Income Tax Act and therefore, these decisions cannot assist the petitioners. We agree with the opinion of the Madras High Court that there was nothing in Section 21(4) of the said Act, which took away the benefit of the exemption of Rs. 1 lac, which was granted to an individual assessee, while assessing the representative assessee from whom tax was to be leviable and recoverable to the same extent.

7. The Budget speech of the Hon'ble Finance Minister and the notes on clauses, were referred to by the learned Counsel for the Revenue to show that the intention of the legislature was to provide a flat rate of 3%. The Board's explanation to the amendments made in the law were also referred to, in order to contend that the exemption limit of Rs. 1 lac was done away with. We are unable to resort to the Budget speech and the Board's subsequent opinion on amendments, in view of the unambiguous nature of the provision of Section 21(4). In our view, the language of the provisions of Section

21(4) is unambiguous and it clearly indicates that the wealth tax which was not payable by an individual was also not payable by the representative assessee. Therefore, only when the wealth tax was payable by an individual when the net wealth exceeded the exemption limit, that the question of recovering tax at a higher rate, prescribed by clause (b) of sub-section (4) of Section 21, from such representative assessee would arise. In this view of the matter, the decisions of the Supreme Court in C.A Abraham Vs. ITO (supra) holding that in interpreting a fiscal statute, an assumption that the words were used in a restricted sense so as to defeat the avowed object of the legislature qua a certain class will not be lightly made; and in K.P. Varghese V. I.T.O (supra) holding that speeches by the members of the legislature on the Floor of the House when the Bill was debated can be referred to for ascertaining the mischief sought to be remedied by the legislature and that the circulars of the CBDT explaining the amended provisions are in nature of contemporanea expositio furnishing legitimate aid in construction of the provision, cannot assist the Revenue. In fact, in the last mentioned case the Hon'ble the Supreme Court in terms held in para 11 of the judgement that the rule of construction by reference to contemporanea expositio "must give way where the language of the statute is plain and unambiguous".

In the above view of the matter, we answer the question referred to us in the affirmative in favour of the assessee and against the Revenue. The reference stands disposed of accordingly with no order as to costs.

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*/Mohandas